



# Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108  
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 542

IN THE MATTER  
OF  
ROSS W. SMITH

## DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission ("Commission") and Ross W. Smith ("Smith") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On November 15, 1995, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Smith. The Commission has concluded its inquiry and, on December 13, 1995, found reasonable cause to believe that Smith violated G.L. c. 268A.

The Commission and Smith now agree to the following findings of fact and conclusions of law:

1. Smith was, during the time relevant, an elected selectman in the Town of Uxbridge. As such, Smith was a municipal employee as that term is defined in G.L. c. 268A, §1.
2. In June 1994, the town decided to sell a 1985 surplus school bus ("the Bus"). The town publicly advertised the sale and sought sealed bids.
3. John Stratton, Jr. ("Stratton") is an electrician who owns Stratton Electric in Uxbridge.
4. Smith asked Stratton to submit a bid for the Bus for him, and Stratton agreed.
5. On a Stratton Electric invoice dated July 12, 1994, Stratton submitted a signed \$553 bid for the Bus on Smith's behalf. The bid did not disclose Smith's financial interest in the matter.
6. The selectmen opened the Bus bids at their July 18, 1994 meeting. They received two bids; one from The Weagle Bus Company for \$500 and the other from Stratton Electric for \$553.
7. Smith, as a selectman, made a motion and voted to award the contract to Stratton Electric. The motion passed unanimously.
8. Smith did not disclose that Stratton was only a straw or that he (Smith) was the real bidder.
9. Smith subsequently paid for the Bus with a treasurer's check for \$553. Smith thereafter took possession of the Bus.
10. On July 29, 1994, Smith sold the Bus at the Concord Auto Auction for \$750. After deducting \$125 in auction fees, Smith earned \$72 profit on the sale of the Bus.
11. By using Stratton Electric to submit the bid for the Bus, Smith concealed the fact that he had a financial interest in the bid.

12. Section 19 of G.L. c. 268A prohibits a municipal employee from participating as such an employee in a particular matter in which to his knowledge he has a financial interest.

13. The decision to award the bid to Stratton Electric for the surplus Bus was a particular matter.

14. Smith participated in that particular matter by making the motion and voting to award the Bus bid to Stratton Electric. Smith, as the real bidder, had a financial interest in the Bus contract award.

15. Smith, by making the motion and voting to award the contract to Stratton Electric, participated in his official capacity in a particular matter in which he knew he had a financial interest, thereby violating G.L. c. 268A, §19.

16. Section 20 of G.L. c. 268A, in relevant part, prohibits a municipal employee from, knowingly or with reason to know, having a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town in which the city or town is an interested party.

17. Upon its acceptance of the bid for \$553, the town entered into a contract within the meaning of that term in §20. Smith, the actual (although concealed) buyer, had a financial interest in that contract because he had to pay the \$553 and he would obtain title to the Bus. Therefore, Smith had an indirect financial interest in that contract in violation of §20.

18. Smith fully cooperated with the Commission's investigation.

In view of the foregoing violations of G.L. c. 268A by Smith, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings on the basis of the following terms and conditions agreed to by Smith:

(1) that Smith pay the Commission the sum of two thousand dollars (\$2,000.00) as a civil penalty for his course of conduct in violating G.L. c. 268A, §'19 and 20 as stated above; and

(2) that Smith waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE: February 21, 1996**